

Ensuring Consistent Administration of the African Growth and Opportunity Act (AGOA) to Increase Trade by Small Businesses

The U.S. African Growth and Opportunity Act (AGOA) provides duty-free access to the U.S. market for a number of products from sub-Saharan Africa, creating opportunities for small- and medium-sized enterprises across sectors. AGOA was meant to build upon the U.S. Generalized System of Preferences (GSP) program to add new products and extend the duration of benefits for qualifying countries in sub-Saharan Africa. The law is clear that all products eligible for GSP treatment are also eligible for duty-free treatment under AGOA. Yet, since GSP expired on July 31, 2013, a number of smaller businesses have faced administrative hurdles and uncertainty about whether their goods, which were receiving duty-free treatment under GSP, will continue to receive duty-free access to the U.S. market under AGOA.

The New Markets Lab (NML), a Washington-based non-profit organization pioneering an equitable approach to using law and regulation to open markets, learned of this challenge through one of its partners, a small Kenya-based handicrafts business. The company originally was advised to pay duties and claim a refund when and if GSP is reauthorized, despite product eligibility under AGOA, due to administrative uncertainty around claiming preferences under AGOA. For this small company, the duty rate was prohibitively high, and obtaining a refund once GSP was reinstated would be too uncertain. Through collaboration with the International Senior Lawyers Project (ISLP), NML partnered with Crowell and Moring LLP and identified this as a pervasive problem, due to the way in which AGOA products also covered under GSP are designated under the Harmonized Tariff Schedule of the United States (HTSUS).

Under the HTSUS, product designation under a trade preference program or free trade program is shown through a Special Program Indicator (SPI; See Attachment A). For GSP, the SPI is "A," (for GSP Plus, "A+"), and importers are required to enter this code on the customs clearance form to claim the preference. For AGOA, the SPI is "D," but this code is used only for more import-sensitive products eligible only under AGOA. U.S. Customs and Border Protection (CBP) has issued clear guidance to customs brokers that goods eligible for preferential treatment under AGOA may continue to receive preferences if they display SPIs of "A," "A+" or "D," yet this guidance has not been consistently applied. The U.S. International Trade Commission (ITC) Dataweb, an interpretation of HTSUS available online and relied upon by many customs brokers and traders, also reflects a significant discrepancy in SPIs (Attachment B). In the HTSUS, many products eligible under both AGOA and GSP are only designated with an SPI for GSP and not one for AGOA. The error on Dataweb is more acute. Dataweb only designates such projects as GSP- eligible and specifically states they are ineligible to receive AGOA benefits, which directly conflicts with the letter and intent of the AGOA statute. These administrative oversights present a considerable hurdle for small businesses and undermine the development benefits of AGOA.

The SPI discrepancies described above must be corrected for small businesses to fully realize the benefits of AGOA. The partners in this initiative recommend (1) coordinating with U.S. Customs and Border Protection (CBP), importers, and customs brokers to ensure AGOA eligible goods are designated easily and properly cleared at all ports, (2) administratively amending the HTSUS to add an AGOA SPI for all AGOA eligible products (Attachment C), and (3) correcting the errors in Dataweb. For more information, please contact the New Markets Lab (skeating@newmarketslab.org).

Attachment A

0709.40		Celery other than celeriac:				
0709.40.20	00	Reduced in size.....	kg.....	14.9%	Free (AU,BH,CA, CO,D,E,IL,JO, MX,OM,P,PA,PE, SG) 1.4% (MA) 5.9% (KR) See 9911.95.11- 9911.95.15 (CL)	35%
0709.40.40	00	Other: If imported and entered during the period from April 15 to July 31, inclusive, in any year.	kg.....	0.25¢/kg	Free (A,AU,BH,CA, CL,CO,E,IL,JO, KR,MA,MX,OM,P, PA,PE,SG)	4.4¢/kg
0709.40.60	00	Other.....	kg.....	1.9¢/kg	Free (AU,BH,CA, CL,CO,D,E,IL, JO,KR,MA,MX, OM,P,PA,PE,SG)	4.4¢/kg

Attachment B

2014 U.S. Tariff and Trade Data for a specific product 2014 Tariff and Most Recent Annual U.S. Import Information

Contact US

▶ DataWeb Assistance

Tariff and Trade DataWeb

Other External Links

- ▶ Customs Rulings (CROSS)
- ▶ Order Data from Census
- ▶ Schedule B for Exports
- ▶ International Trade Data System

HTS Number	07092010
Brief Description	Asparagus, fresh or chilled, not reduced in size, if entered September 15 to November 15, inclusive, and transported to the U.S. by air

Preferential (duty-free or reduced rate) tariff program applicability to this HTS item		
GSP (Generalized System of Preferences)	Status	Eligible: code "A"
	Countries Excluded from GSP eligibility on this item	
Civil Aircraft Agreement Preference		Not eligible
Tariff concession on Dyes		Not eligible
CBI or CBERA (Caribbean Basin Initiative) Preference	Status	Eligible: code "E"
	<i>Ad Valorem</i> Rate	0%
	Specific Rate	\$0
AGOA (African Growth and Opportunity Act)		Not Eligible

(c) Status of Harmonized Tariff Schedule

(1) The following shall be considered to be statutory provisions of law for all purposes:

(A) The provisions of the Harmonized Tariff Schedule as enacted by this chapter.

(B) Each statutory amendment to the Harmonized Tariff Schedule.

(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974 [19 U.S.C. 2483]).

(2) Neither the enactment of this chapter nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—

(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or

(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.

(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective² rate of duty.

(d) Interim informational use of Harmonized Tariff Schedule classifications

Each—

(1) proclamation issued by the President;

(2) public notice issued by the Commission or other Federal agency; and

(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency;

during the period between August 23, 1988, and January 1, 1989, shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

(Pub. L. 100-418, title I, §1204, Aug. 23, 1988, 102 Stat. 1148.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule, referred to in text, is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

The Trade Act of 1974, referred to in subsec. (b)(1)(A)(i), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter

12 (§2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

The Trade Agreements Act of 1979, referred to in subsec. (b)(1)(A)(i), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

The United States-Israel Free Trade Area Implementation Act of 1985, referred to in subsec. (b)(1)(A)(ii), is Pub. L. 99-47, June 11, 1985, 99 Stat. 82, as amended, which amended sections 2112, 2462 to 2464, and 2518 of this title, and enacted and amended provisions set out as notes under section 2112 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2112 of this title and Tables.

This chapter, referred to in subsec. (c)(1)(A), (2), was in the original “this subtitle”, meaning subtitle B (§§ 1201 to 1217) of title I of Pub. L. 100-418, which is classified principally to this chapter. For complete classification of this subtitle to the Code, see References in Text note set out under section 3001 of this title and Tables.

CODIFICATION

Section is comprised of section 1204 of Pub. L. 100-418. Subsec. (a) of section 1204 of Pub. L. 100-418 amended title I of the Tariff Act of 1930, act June 17, 1930, ch. 497, title I, 46 Stat. 590. See note set out preceding section 1202 of this title.

EFFECTIVE DATE

Subsecs. (b) and (d) effective Aug. 23, 1988, and subsec. (c) effective Jan. 1, 1989, see section 1217(a), (b)(2) of Pub. L. 100-418, set out as a note under section 3001 of this title.

§ 3005. Commission review of, and recommendations regarding, Harmonized Tariff Schedule**(a) In general**

The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

(b) Agency and public views regarding recommendations

In formulating recommendations under subsection (a) of this section, the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

(1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and

²So in original. Probably should be “effective”.

(2) may provide for a public hearing.

(c) Submission of recommendations

The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) Requirements regarding recommendations

The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

(Pub. L. 100-418, title I, §1205, Aug. 23, 1988, 102 Stat. 1150.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule, referred to in subsecs. (a) and (d), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

COMMISSION REPORT ON OPERATION OF IMPLEMENTATION OF HARMONIZED TARIFF SCHEDULE

Section 1216 of Pub. L. 100-418 required Commission, in consultation with other appropriate Federal agencies, to prepare and submit to Congress and President a report regarding operation of subtitle B (§§1201-1217) of title I of Pub. L. 100-418, during the 12-month period commencing on effective date of Harmonized Tariff Schedule, Jan. 1, 1989, said report to be submitted to Congress and President before close of 6-month period beginning on day after last day of such 12-month period.

§ 3006. Presidential action on Commission recommendations

(a) In general

The President may proclaim modifications, based on the recommendations by the Commission under section 3005 of this title, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with United States obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) Lay-over period

(1) The President may proclaim a modification under subsection (a) of this section only after

the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor.

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) Effective date of modifications

Modifications proclaimed by the President under subsection (a) of this section may not take effect before the 30th day after the date on which the text of the proclamation is published in the Federal Register.

(Pub. L. 100-418, title I, §1206, Aug. 23, 1988, 102 Stat. 1151; Pub. L. 109-432, div. D, title III, §3012, Dec. 20, 2006, 120 Stat. 3177.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-432 substituted “30th” for “15th”.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Dec. 12, 1991, 56 F.R. 65413, provided:

Memorandum for the United States Trade Representative

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code and the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418) (“the Act”) [see Tables for classification], you are hereby delegated the functions vested in me by section 1206(b) of the Act (19 U.S.C. 3006(b)), to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate reports that set forth proposed modifications to the Harmonized Tariff Schedule [see 19 U.S.C. 1202] and the reasons therefor.

The President shall retain the authority under section 1206 of the Act to proclaim modifications to the Harmonized Tariff Schedule after the layover period specified in section 1206(b) has expired.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

§ 3007. Publication of Harmonized Tariff Schedule

(a) In general

The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

(1) in the form of microfilm images; or

(2) in the form of electronic media.

(b) Content

Publications under subsection (a) of this section, in whatever format, shall contain—